AFR

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

W. P. (C) No. 3005 of 2007

Petitioners : Kamta Prasad Sen & others

Versus

Respondents : Rajmanti @ Rajva & another

Post for order on 25th June, 2007.

Sd/-
Satish K. Agnihotri
Judge

(35)

HIGH COURT OF CHHATTISGARH AT BILASPUR

W.P. (C) No. 3005 of 2007

Petitioners	1.	Kamta Prasad Sen, S/o Late Raghuvir *Prasad Sen, 65 yrs.*
	2.	Pannalal Sen, S/o Kamta Prasad Sen, 48 yrs.
	3.	Vijay Kumar Sen, S/o Kamta Prasad Sen, 30 yrs.
		All R/o Ward No.5, Manendragarh, Distt. Korea (C.G.)
	Versus	
Respondent	1.	Rajmanti @ Rajva, W/o Chintamani *Sen, 50 yrs.*
	2.	Chintamani Sen, S/o Late Vasudeo Prasad Sen, 58 yrs
		Both R/o Ward no.17, Manendragarh, Distt. Korea (C.G.)

SB: Hon'ble Mr. Justice **Satish K. Agnihotri,**

Shri Prafull Bharat, Advocate for the petitioners.

Shri Sanjay K. Agarwal, Advocate for the respondents.

ORDER

(Passed on this 25th day of June, 2007)

1. By this petition filed under Article 227 of the Constitution of India, the petitioners impugn the legality and validity of the order dated 31.1.2007 (Annexure P/4) passed by the Civil Judge, Class-II, Manendragarh, District Korea, on an application filed under Order 6 Rule 17 of the Code of Civil Procedure for amendment in the plaint.

2. The indisputable facts in nutshell are that the petitioner filed a civil suit for declaration and permanent injunction on 1.7.1999. Written statement on behalf of the respondents No. 1 and 2 was filed on 23.7.1999. The petitioner, thereafter, filed an application (Annexure P/3) on 7.3.2006 under Order 6 Rule 17 of the Code of Civil Procedure seeking amendment in the plaint by incorporating para 9-A as under:-

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"(अ) यह कि वादी प्रतिवादी गण ने वादग्रस्त मकान मे वादी के ताले के उपर जो अपना ताला लगाया था उक्त मकान मे मुकदमें के दौरान प्रतिवादी गण ने कब्जा कर लिया है इस कारण वादी गण को वादग्रस्त मकान पर कब्जा प्राप्त करना आवश्यक हो गया है।"

3. That in the relief clause also the petitioner sought for amendment as under:-

"यह कि वाद ग्रस्त मकान का कब्जावादी गण को प्रतिवादी गण से दिलाया जावे"

4. That learned trial Judge after hearing learned counsel for the parties came to the conclusion that the petitioner was aware of the fact of putting the lock on the suit property over the lock of the petitioner. Therefore, the subsequent amendment seeking for a relief for possession was not justified. Accordingly, the same was rejected under proviso to Rule 17 of Order 6 of the C.P.C.
5. Learned counsel appearing for the petitioners would submit that during the pendency of the suit the respondents (defendants) had put the lock over the lock of the petitioner and had forcibly taken the possession of the suit premises. Thus, accordingly, the amendment was sought in the suit with the prayer for possession.
6. Learned counsel appearing for the respondents would submit that this petition be allowed so that the suit can be disposed of expeditiously.
7. Having heard learned counsel for the parties and perusing the documents appended to the pleadings, it is apparent that if the amendment, as sought for by the petitioners is not allowed, the suit for declaration and permanent injunction would be untenable.

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8. The Hon'ble Supreme Court in the matter of **Sampath Kumar v. Ayyakannu**[1] , observed as under:

> "7. In our opinion, the basic structure of the suit is not *altered by the proposed amendment. What is sought to* be changed is the nature of relief sought for by the plaintiff. In the opinion of the trial Court it was open to the plaintiff to file a fresh suit and that is one of the reasons which has prevailed with the trial Court and with the High Court in refusing the prayer for amendment and also in dismissing the plaintiff's *revision. We fail to understand, if it is permissible for the* plaintiff to file an independent suit, why the same relief which could be prayed for in a new suit cannot be *permitted to be incorporated in the pending suit. In the* facts and circumstances of the present case, allowing the amendment would curtail multiplicity of legal proceedings."

It was further observed , as under:-

> "11. In the present case the amendment is being sought for *almost 11 years after the date of the institution of the suit. The* plaintiff is not debarred from instituting a new suit seeking relief of declaration of title and recovery of possession on the same basic facts as are placed in the plaint seeking relief of issuance of permanent prohibitory injunction and which is pending. In order to avoid multiplicity of suits it would be sound exercise of discretion to permit the relief of declaration of title *and recovery of possession being sought for in the pending* suit. The plaintiff has alleged the cause of action for the reliefs now sought to be added as having arisen to him during the *pendency of the suit. The merits of the averments sought to be* incorporated by way of amendment are not to be judged at the stage of allowing prayer for amendment. However, the defendant is right in submitting that if he has already perfected his title by way of adverse possession then the right so accrued should not be allowed to be defeated by permitting an amendment and seeking a new relief which would relate back *to the date of the suit and thereby depriving the defendant of* the advantage accrued to him by lapse of time, by excluding a period of about 11 years in calculating the period of the *prescriptive title claimed to have been earned by the* defendant. The interest of the defendant can be protected by directing that so far as the possession, now sought for, are concerned the prayer in that regard shall be deemed to have been made on the date on which the application for amendment has been filed.

9. Further, in the matter of **Mehar Chand Das v. Lal Babu Siddique & Ors.**[2], the Hon'ble Supreme Court in regard to the tenability of the suit

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for declaration, without claiming the relief for possession, observed as under:

> "9. Section 34 of the Specific Relief Act, 1963 reads as under:
>
> "*Discretion of Court as to declaration of status or right.*- Any *person entitled to any legal character, or to any right as to any* property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the Court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:
>
> Provided that no Court shall make any such declaration where *the plaintiff, being able to seek further relief than a mere declaration* of title, omits to do so."
>
> "12. The High Court, in our opinion, committed a manifest error in *not relying upon the decision of this Court in Vinay Krishna (supra)* the said decision categorically lays down the law that if the plaintiff had been in possession then a suit for mere declaration would be maintainable: the logical corollary whereof would be that if the plaintiff is not in possession, a suit for mere declaration would not be maintainable."

10. Having regard to the facts and circumstances of the case wherein the suit was filed for declaration and permanent injunction was tenable when the plaintiffs (petitioners) were in possession. During the pendency of the suit, it appears that the possession was taken over by the defendants, thus the suit has become untenable if the appropriate relief for amendment, as prayed for, is not granted.

11. Looking from all angles, the petition deserves to be and is allowed. In the facts and circumstances of the case, there shall be no order as to costs.

Sd/-
Satish K. Agnihotri
Judge

(AIR 2002 SC 3369)[1]
(2007 AIR SCW 2024)[2]

Thakur